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No. 87-964

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JOHN DESOTO,
Petitioner,
vs.

YELLOW FREIGHT SYSTEM, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
STATEMENT AS TO RULES 34.1 and 28.1	1
STATEMENT OF THE CASE	3
A. The Facts	3
B. The Proceedings Below	7
SUMMARY OF THE ARGUMENT	10
ARGUMENT	14
I DESOTO ASKS THIS COURT TO RULE ON AN ABSTRACT PROPOSITION OF LAW.	14
II THERE IS NO BASIS ON THE MERITS FOR THE REVIEW SOUGHT.	16
A PETITIONER MISTATES THE TRUE NATURE AND PRESENT STATUS.	16
B THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH APPLICABLE DECISIONS OF THIS COURT.	21
C THE DECISION OF THE COURT OF APPEALS IN THIS CASE ON THE PRE-EMPTION ISSUE DOES NOT CONFLICT WITH DECISION IN OTHER CIRCUITS.	29

		Page
CONCLUSION		35
APPENDIX A	California Vehicle Code §8010(a)	A-1
APPENDIX B	Article 46	B-1

TABLE OF AUTHORITIES

Page

Cases

Allis-Chalmers v. Lueck
471 U.S. 202, 85 L.Ed.2d 206, 105 S.Ct. 1905 (1985) — 12,24,28 30,31,33

Baldracchi v. Pratt & Whitney Aircraft Division, United Technologies Corporation
814 F.2d 102 (2d Cir. 1987) — 29,30,32

Electrical Workers v. Hechler
481 U.S. ___, 95 L.Ed.2d 791, 107 S.Ct. 2161 (1987) — 24

Garibaldi v. Lucky Foods Stores, Inc.
726 F.2d 1367 (1984) cert. denied, 471 U.S. 1099, 105 S.Ct. 2319, 85 L.Ed.2d 839 (1985) — 17,18

Herring v. Prince Macaroni of New Jersey, Inc.
799 F.2d 120 (3d Cir. 1986) — 30,33

Johnson v. Hussman Corp.
805 F.2d 795 (8th Cir. 1986) — 29,30,32

Lingle v. Norge Division of Magic Chef, Inc.
823 F.2d 1031 (7th Cir. 1987) — 29,30,32

Metropolitan Life Insurance Co. v. Taylor
481 U.S. ___, 95 L.Ed.2d 55, 107 S.Ct. 1549 (1987) — 24

Page

Peabody Gallion v. Dollar
666 F.2d 1309 (10th Cir. 1981) 30,32,33

Pilot Life Insurance Co. v. Dedeaux
481 U.S. ___, 95 L.Ed.2d 39,
107 S.Ct. 1542 (1987) 24,28

San Diego Building Trades Council
v. Garmon
359 U.S. 236, 3 L.Ed.2d 775,
79 S.Ct. 773 (1959) 33

Tameny v. Atlantic Richfield Co.
27 Cal.3d 167,
164 Cal.Rptr. 839,
610 P.2d 1330 (1980) 7,17,18,23

United Mine Workers v. Gibbs
383 U.S. 715, 6 L.Ed.2d 218,
86 S.Ct. 1130 (1966) 10,22,23.

United Paperworkers International
Union v. Misco, Inc.
Supreme Court Case No. 86-651,
decided December 1, 1987 21,27

United Steelworkers v. Enterprise
Wheel and Car Corporation
363 U.S. 593, 4 L.Ed.2d 1424,
80 S.Ct. 1358 (1960) 27

Vantine v. Elkart Brass
Mfg. Co., Inc.
762 F.2d 511
(7th Cir. 1985) 29,30,32

Page

Federal Statutes

28 U.S.C. §1445(c) 2,32

Labor Management Relations Act
["LMRA §301"] 29 U.S.C. §185 passim

State Statutes

California Vehicle Code §8010(a) 2,5

Rules

United States Supreme Court Rules
Rule 17(a) 17
Rule 17(c) 17
Rule 28.1 1,2
Rule 34.1 1
Rule 34.1(a) 1
Rule 34.1(b) 1
Rule 34.1(d) 1
Rule 34.1(e) 1
Rule 34.1(f) 1,2

NO. 87-964

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JOHN DESOTO,

Petitioner,

v.

YELLOW FREIGHT SYSTEM, INC.

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT AS TO RULES 34.1 and 28.1

Respondent has no objection to the Petition in respect to Rules 34.1 (b)(d) and (e). As to Rules 34.1 (a) and (f) and Rule 28.1 Respondent states as follows:

Rule 34.1 (a): Respondent objects to Petitioner's statement of the

"Question Presented" on the grounds that neither the question therein posed or any subsidiary question included therein is in fact posed by the decision and judgment of the Court of Appeals or by the record made in the action.

Rule 34.1(f): The statement of statutes involved should include:

28 U.S.C §1445(c) which reads as follows:

"A civil action in any state court arising under the workmen's compensation laws of such state may not be removed to any district court of the United States".

California Vehicle Code §8010(a). See Appendix A for text.

Rule 28.1: The names of the parent company of Respondent Yellow Freight System, Inc. [Yellow Freight] its subsidiaries (except wholly owned subsidi-

iaries) and all of its affiliates are set forth in the margin. 1/

STATEMENT OF THE CASE

At all stages in this controversy the underlying question has been whether petitioner John DeSoto ["DeSoto"] would have violated any law if he had done the work assigned to him on March 7, 1984 as ordered. DeSoto's statement of the case is unsatisfactory because it is not an accurate statement of the true nature of that dispute.

A. The Facts

On March 7, 1984 DeSoto was employed by Yellow Freight an interstate common carrier of property by motor vehicle, as

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1. Yellow Freight System, Inc. of Delaware; Northcutt Inc.; Delcan, Inc.; 266963 B. C., Ltd.; Northcutt Trailer Sales, Inc.; Northcutt Truck Center, Inc.; Ontario Enterprises, Inc.; Yellow Freight System of British Columbia, Inc.; Yellow Freight Ontario, Inc.

as a pick-up and delivery driver at a company terminal in Los Angeles, CA. DeSoto's job assignment on that day was to deliver two shipments then loaded in Yellow Freight's trialer No. 19563 ["Trailer 19563"]. DeSoto refused to comply with that order because Trailer 19563 did not carry the evidence of its registration in California for 1984 which DeSoto considered was necessary to make it lawful for him to operate the trailer. Before any disciplinary action was taken Brian Sibley, the terminal manager, sought and secured advice of an attorney that Desoto would not violate the law if he operated Trailer 19563 without a current registration card.

Trailer 19563 was in fact then duly registered for operation in California as a foreign commercial vehicle for the entire year 1984 under the terms of a

reciprocity agreement between the states of California and Illinois which became effective on January 1, 1984. ["IRP Agreement"]. The statutory authority for that agreement was California Vehicle Code §8010(a). The registration card required by the IRP Agreement had been issued but was not with the vehicle on March 7, 1984

DeSoto was an employee under covered a collective bargaining agreement between Yellow Freight and the Teamsters. The here most pertinent portions of that agreement are correctly summarized in the opinion of the Court of Appeals, (Petition, Appendix A, pp. 7a-8a, 820 F. 2d 1434, at 1436). The opinion of the Court of Appeals also summarizes correctly the disciplinary action taken on March 7, 1984 pursuant to that agreement, (Petition Appendix

A, pp. 5a-7a, 820 F.2d at, 1435-1436).

At the time of the events the issue in dispute was whether DeSoto would be violating any law if he drove Trailer 19563 when it did not have with it a card evidencing its current registration in California.

At DeSoto's request his union grieved his discharge through those procedures. After a hearing, a transcript which is of record in this case, the Joint Western Area Committee upheld the discharge. On the evidence presented at the hearing the issue before the arbitrators was whether DeSoto would have violated any law if he had driven Trailer 19563, a duly registered vehicle, when it did not have with it a card evidencing such registration. DeSoto concedes he was fairly represented by his union at all stages of

his discharge dispute.

B. The Proceedings Below.

In his complaint, filed originally in California Court, DeSoto made both a federal law claim under Section 301 of the Labor Management Relations Act ["LMRA §301"] 29 U.S.C. §185 to set aside the arbitration award sustaining his discharge, and a state law tort claim on authority of Tameny v. Atlantic Richfield Co. 27 Cal. 3d 167, 164 Cal. Rptr. 839, 610 P.2d 1330 (1980) in which he sought both actual and punitive damages for wrongful discharge. Both claims are based on the same operative facts.

On Yellow Freight's motion the case was removed to the federal court. DeSoto has never moved for remand of the state law claim to the state court. The case was resolved in the District

Court on cross-motions were judgment. Those cross-motions were resolved in DeSoto's favor by the District Court by the "Partial Judgment", a copy of which is Appendix C of the Petition.

The Court of Appeals on a de novo review of the Partial Judgment reversed and granted judgment on both claims for Yellow Freight. DeSoto's petition for rehearing and request for hearing en banc were denied.

At all stages in the litigation it has been DeSoto's position that his claim of wrongful discharge can be prosecuted both as a federal claim under [LMRA § 301] and as a state law tort claim in the same action and that federal courts have jurisdiction to hear and resolve both claims.

By decision and judgment the Court

of Appeals has held that DeSoto would not have violated any law if he had operated the trailer without the requisite permits, (Petition, Appendix pp.16-17a, 820 S. 2d at 1438). DeSoto accepts that holding as valid as it pertains to the grievance and his federal law claim under LMRA §301 (Petition, p.14 n.2).

DeSoto's statement of the "Question Presented" and his agruments for grant of a writ of certiorari are all based on the premise that he was "terminated for his refusal to violate state law in public policy". That premise is in direct conflict with the evaluation of the facts and California law made by the Court of Appeals in its decision, (Petition Appendix A, pp. 16a-17a, 820 F.2d at 1438).

SUMMARY OF THE ARGUMENT

DeSoto's petition is founded on the invalid premise that he was discharged for his refusal to violate state law and public policy. He was in fact discharged because he refused to perform a lawful work order on the mistaken belief that it required him to violate the law and the Court of Appeals has so held. Because the "Question Presented" by Petitioner is based on a premise contrary to the record made in the Court below Petitioner is asking this Court to rule on an abstract proposition of the law.

The decision of the Court of Appeals to take pendant jurisdiction of the state law claim was proper under United Mine Workers v. Gibbs, 383 U.S. 715, 6, L.Ed. 2d 218, S.Ct. 1130, (1966) even without consideration of the pre-

emptive effect of LMRA §301. By its holding that DeSoto was mistaken in his belief that his work order required him to do an unlawful act the Court of Appeals has in fact resolved the state law claim on its merits under applicable state law. There is a valid basis for the judgment on the state law claim without considering the holding on the pre-emption issue.

The only issue in dispute at the time of the events and thereafter was whether DeSoto would violate the law if he drove his trailer without its registration card in place. That issue was resolved against him by an arbitration award after a fair hearing. The Court of Appeals has affirmed the award. DeSoto accepts that decision. Under federal labor law DeSoto was discharged for good cause and that discharge is

final and binding.

The Court of Appeals has interpreted and applied correctly the standards established by this Court in Allis-Chalmers v. Lueck, 471 U.S. 202 85 L.Ed. 2d 206, 105 S.Ct. 1904 (1985) on the issue of pre-emption under LMRA §301 because: (1) the sole liability issue under both the bargaining agreement and the state law claim is whether DeSoto was discharged for "good cause"; (2) in this case the only legal right potentially invaded under both claims is the "good cause" contract right; (3) pre-emption is the only way to preserve the central role of arbitration required by federal labor law.

The cases relied upon by DeSoto to establish a conflict in the Circuits do not do so because: (1) the link between the state court claim and the labor con-

tract must be determined on a case by case basis; (2) in the cited cases the employee had both a "good cause" contract right and an independent state law right and the conflict arose because the Courts of Appeal had differing views as to whether, for pre-emption purposes, the wrong charged should be treated as an invasion of the contract right or an invasion of an independent state law right; (3) in this case there could be no liability under the state law claim unless there was also on the same facts a good cause liability under the contract; (4) the pre-emption issue here is whether, on the same facts and in the same case, LMRA §301 allows DeSoto to be rightfully discharged under federal law and wrongfully discharged under state law.

ARGUMENT

I

DESOTO ASKS THIS COURT TO RULE ON AN ABSTRACT PROPOSITION OF LAW.

The "Question Presented" in the petition presumes that DeSoto was discharged for "his refusal to violate state law and public policy" (Petition, p.i). There is no basis for that presumption in this case.

In its decision the Court of Appeals concluded that DeSoto-

> "...was fired because he had in good faith believed that it was illegal for him to drive the trailer without the requisite permits in the truck. In fact he was mistaken in that belief... He was not acting in defense of a public policy of the state of California, but incorrectly asserting his own interpretation of the law" (Petition, Appendix A. pp.16a-17a, 820 F.2d at 1438).

DeSoto petitioned for rehearing and requested hearing en banc on the ground,

among others, that those findings and conclusions of the Court of Appeals were erroneous. His petition and request were denied (Petition, Appendix B, pp.18a-19a).

The above quoted findings and conclusions of the Court of Appeals are in direct conflict with DeSoto's assertion in the "Question Presented" that he was terminated for his refusal to violate state law and public policy. Those findings and conclusions are an integral part of the decision and judgment which DeSoto now asks this Court to review.

There is no possible way the decision and judgment of the Court of Appeals could be construed as a holding that DeSoto was discharged for his refusal to violate state law and public policy. DeSoto's proposal that this Court should assume for purposes of this

petition that DeSoto's concept of a California law is correct does not supply that deficiency.

Because he asks this Court to presume that he was discharged for his refusal to violate the law and public policy when the Court below held he did not so, DeSoto is requesting this Court to adjudicate a hypothetical question of law. The petition should be denied on that ground.

II

THERE IS NO BASIS ON THE MERITS FOR THE REVIEW SOUGHT.

A

PETITIONER MISTATES THE TRUE NATURE AND PRESENT STATUS

DeSoto seeks review of the holding of the Court of Appeals that his state claim is pre-empted by LMRA § 301. His argument is that a writ of certiorari is

proper under both Rule 17(a) and Rule 17 (c). The argument is faulted on both counts because DeSoto has not stated correctly the true nature and status of the case.

Throughout this litigation it has been DeSoto's contention that his discharge involved a fact situation comparable to that presented in Tameny v. Atlantic Richfield Co. 27 Cal.3d 167, 164 Cal.Rptr. 839, 610 P.2d 1330 (1980) and Garibaldi v. Lucky Food Stores, Inc. 726 F.2d 1367 (1984) cert. denied 471 U. S. 1099, 105 S.Ct. 2319, 85 L.Ed. 2d 839 (1985). It does not.

Tameny and Garibaldi both involved situations in which the Courts and the parties were required to take the facts alleged in the complaint as true. On that basis it was accepted as a fact that the challenged order required the

employee to commit a criminal act and that the employer was aware that the employee would be committing a criminal act if he complied with the order.

Unlike the situation in Tameny and Garibaldi the facts alleged by DeSoto in his complaint are not controlling here. By its decision and judgment in this case the Court of Appeals has concluded after a de novo review of the entire record that DeSoto's work order did not require him to violate the law. Those findings and conclusions cannot be ignored for the purpose of defining the fact situation with which the Court of Appeals was dealing in its consideration of the pre-emption issue. At the very least, they demonstrate that the question in issue on the discharge was whether the work order did or did not

violate the law. There was never an issue as to whether DeSoto could be required to violate the law.

The terms of the bargaining agreement are also of vital importance for a proper delineation of the pre-emption issue. The provision of the collective bargaining agreement here most directly involved is Article 46, the pertinent portions of which are reproduced as Appendix B. As therein stated, a permanent employee may not be discharged "without just cause". For present purposes the procedures to accomplish a discharge are important.

Under the terms of Article 46 DeSoto had the right to request an investigation as to his discharge and to "be reinstated" should such and investigation prove "an injustice" had been done. The grievance precedures provided

for elsewhere in the bargaining agreement was that "investigation". Its final step was an arbitration award of the Joint Western Area Committee. ["Area Committee"]

The Area Committee was authorized to resolve "any controversy which might arise". By Article 46 that Committee was granted authority to accept or reject any or all arguments pertaining to the issue in each case.

DeSoto requested an investigation of his termination. His objection was grieved by his union on his behalf. He concedes he was fairly represented by his union at all times. By the terms of Article 46 Yellow Freight had authority to require DeSoto to work during the pendency of his grievance proceeding (Appendix B, Art. 46, Sec. 2(c)). Under that authority DeSoto was working at the

time his discharge was upheld on grievance. DeSoto status as an employee did not end until that award was made.

B.

THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH APPLICABLE DECISIONS OF THIS COURT

By its decision and judgment the Court of Appeals resolved DeSoto's federal law claim under LMRA §301 to set aside the grievance award. Its decision on that aspect of the litigation follows and applies the federal law governing judicial review of arbitration awards most recently restated by this Court in United Paperworkers International Union v. Misco, Inc., Supreme Court Case No. 86-651, decided December 1, 1987. The necessary effect of the decision and judgment on the LMRA §301 claim is that

under federal labor law the grievance award sustaining DeSoto's discharge is final and binding. DeSoto does not challenge that determination.

As the Court of Appeals stated, the remaining issue before it for decision was whether the pendent state claim was properly heard. The Court of Appeals concluded it did have such authority under the standards fixed by this Court in United Mine Workers v. Gibbs, 383 U. S. 715, 16 L.Ed 2d. 218 (1966) 86 S.Ct. 1130. Unless he does so now, DeSoto has never objected to the adjudication of his state law claim by the federal courts. The basic issue in dispute - whether his work order required DeSoto to violate the law - is common to both claims. The Courts of Appeals has adjudicated the LMRA §301 claim by a judgment on the merits and thereby re-

tains jurisdiction over the federal law claim. Clearly, the requirements stated in Gibbs for exercise of pendent jurisdiction are met.

In its resolution of the state law claim the Court of Appeals has done two things:(1) It has held the state law claim is pre-empted by §301; and (2) It has held that DeSoto's work order did not require him to violate state law. Thus, even if the pre-emption holding were ignored, the judgment in the state law claim would still be proper because DeSoto has failed to prove a claim under the rule of State tort law established in Tameny v. Richfield Oil, Co., 27 Cal. 3d 167, Supra.

It is now clearly established that it was the intent of Congress that principles of federal law established under LMRA §301 must be paramount in the area

covered by that statute and that the pre-emptive force of LMRA §301 is broad. Allis-Chalmers Corporation v. Lueck, 471 U.S. 202, Supra. Metropolitan Life Insurance Co. v. Taylor 481 U.S. ___, 95 L.Ed 2d 55, 107 S.Ct. 1549 (1987); Pilot Life Insurance Co. v. Dedeaux, 481 U.S. ___, 95 L.Ed. 2d 39, 107 S.Ct. 1542 (1987) Electrical Workers v. Hechler, 481 U.S. ___, 95 L.Ed. 2d. 791, 107 S.Ct. 2161 (1987). The basic issue is whether the state law claim would frustrate the federal labor law contractual scheme established in LMRA §301. In Allis-Chalmers v. Lueck, this Court spelled out the standards to be used for determining when a state law tort claim must be deemed pre-empted by LMRA §301. The Court of Appeals cited that case and applied its standards here.

In Allis-Chalmers v. Lueck, 471

U.S. at 219 this Court stated:

> "A final reason for holding that Congress intended §301 to pre-empt this kind of derivative tort claim is that only that result preserves the central role of arbitration In our 'system of industrial self-government'".

That requirement fits this case exactly. DeSoto'a claim is that he was discharged without just cause both under LMRA §301 and state law. The basic issue in both claims is the same. The ground for termination charged by Yellow Freight was DeSoto's refusal to perform a lawful work order. He challenged the validity of his work order through the grievance procedures of the bargaining agreement. The issue in the grievance proceeding was whether DeSoto's work order required him to violate the law. That is also the issue on the state law claim. That issue was resolved against

DeSoto by the grievance award of the Area Committee. That award has now been affirmed as final and binding by the decision and judgment of the Court of Appeals. Thus, in terms of the liability issue, the state court claim is merely a vehicle for DeSoto to side step the final and binding effect of the grievance award.

The legal effect of Article 46 of the bargaining agreement is that an employee who challenges a discharge is treated as a covered employee denied the right to work pending the outcome of a grievance proceeding. If the attempt to discharge is sustained the employment status ends when the award sustaining the discharge is made. If the employee wins, his continuing employment status is confirmed and he is entitled to recover compensation and fringe benefits for his

work loss. The real goal of DeSoto's state law claim is to recover all damages, both actual and punitive, allowable under California tort law.

The selection of appropriate remedies is an important function of the arbitration process. United Steelworkers v. Enterprise Wheel and Car Corporation, 363 U.S. 593, 597, 4 L.Ed. 2d 1424, 80 S.Ct. 1358 (1960). If they elect to do so the parties can designate what remedies are appropriate by agreement. United Paperworkers Union v. Misco, Inc., Supreme Court Case 86-651, decided December 1, 1987. They have done so in this case, by limiting the remedies to those of an employee wrongfully denied work, (Appendix B, pp. 23).

Even if DeSoto had won on his grievance he would not have been

entitled to the relief he asks for in his state law claim. Provision for settlement of discharge disputes through arbitration would make little sense if the remedies available under the bargaining agreement could be supplanted or supplemented by various state laws Pilot Life Insurance Co. Dedeaux 481 U.S. ____ 95 L.Ed. 2d. 39 at 53.

This is an unfair discharge dispute. As the Court of Appeals stated in its decision, this is the kind of dispute which should be the subject of a grievance procedure.

It should not be either a federal case or a state law or a state court action. The Court of Appeals has restated and applied in a proper case the views expressed by this Court in Allis-Chalmers v. Lueck 471 U.S. 202

supra. The holding of the Court of Appeals that the state law claim is pre-empted by LMRA §301 is in accord with the decisions of this Court.

C.

THE DECISION OF THE COURT OF APPEALS IN THIS CASE ON THE PRE-EMPTION ISSUE DOES NOT CONFLICT WITH DECISION IN OTHER CIRCUITS

DeSoto cites the following cases in support of his argument that a writ of certiorari should issue in this case under Rule 17(a): Lingle v. Norge Division of Magic Chef, Inc. 823 F.2d 1031 (7th Cir. 1987); Vantine v. Elkart Brass Mfg. Co. Inc., 762 F.2d 511 (7th Cir. 1985); Johnson v. Hussmann Corp. 805 F.2d 795 (8th Cir. 1986); Baldracchi v. Pratt & Whitney Aircraft Division, United Technologies Corporation, 814 F.

2d 102 (2d Cir. 1987); Herring v. Prince Macaroni of New Jersey, Inc., 799 F.2d. 120 (3d. Cir. 1986); Peabody Gallion v. Dollar 666 F.2d 1309 (10th Cir. 1981). In Lingle, Johnson and Vantine the Courts of Appeal for the Seventh and Eighth Circuits held there was LMRA §301 pre-emption. In Baldracchi, Herring, and Peabody Gallion the Courts of Appeal for the Second, Third and Tenth Circuits held against pre-emption.

There may be a conflict among those Circuits on the issue posed by the fact situations there presented. The decision of the Court of Appeals in this case poses no conflict in principle with any of those cases.

As this Court stated in Lueck, the basic question on the issue of pre-emption is whether evaluation of the tort claim is "inextricably intertwined" with

the consideration of the terms of the labor contract, Allis-Chalmers v. Lueck 471 U.S. at 213 That determination can only be made on a case by case basis.

In the Courts of Appeal cases cited by DeSoto to establish a conflict among the Circuits the employee claimed in a state law tort action that he/she had been discharged in retaliation for filing a claim under a state workmens' compensation law and that the state law prohibited such retaliation. The state case had been removed to the federal court either on the basis of a federal question or diversity. In all of the cases the posture of the case in the Court of Appeals was such that for purposes of the decision no determination was required as to whether there had or had not in fact been retaliation.

In each case there was a bargain-

ing agreement which allowed discharge only for good cause and provided for final and binding arbitration of discharge disputes. In Lingle, Vantine and Johnson the Court of Appeals involved viewed the retaliation controversy as posing a "good cause" dispute under the bargaining agreement which the parties had agreed to resolve by arbitration. In Baldracchi the Court of Appeals for the Second Curcuit took the positon that the action was one to redress interference with workmens' compensation claim rights guaranteed to the employee by state law. On that concept of the action 28 U.S.C. §1445(c) prohibiting removal of state actions arising under workman's compensation laws was viewed as an indication of congressional intent not to pre-empt under LMRA §301. Peabody Gallion was decided prior to the

decision of this Court in Lueck. It was resolved on the basis of the pre-emption guidelines under the National Labor Relations Act set forth in San Diego Building Trades Council v. Garmon 359 U.S. 236, 3 L.Ed. 2d 775, 79 S.Ct. 773, (1959) Herring involved a situation in which the employer was attempting to enforce a bargaining agreement provision which imposed unlawful time limits on the duration of workmens' compensation benefits. Pre-emption was mentioned only in passing by a footnote reference to Peabody Gallion.

In this case the state law claim is clearly "inextricably intertwined" with considerations of the terms of the labor contract. DeSoto has no substantive legal right against Yellow Freight other than the right to be discharged only for "good cause" guaranteed to him

by the labor contract. By common consent discharge for refusing to violate the law would be a discharge "without just cause" under the agreement. Thus, what the state law upon which DeSoto relies here really does is to give to those who are employees at will the same "good cause" protection which DeSoto already has under the bargaining agreement.

This case illustrates why the state law claim must be pre-empted and treated as a claim under LMRA §301. The dispute which led to DeSoto's discharge was the need for a registration card on the trailer he was ordered to drive. DeSoto lost on that legal issue on grievance. There is an award sustaining his discharge which is final and binding under federal law. The only possible benefit of the state law claim to DeSoto is that

he might get damages he could not recover if he had won on his discharge grievance.

DeSoto was not discharged "for his refusal to violate state law and public policy". As the Court of Appeals stated

> "He was not acting in defense of the public policy of the state of California, but incorrectly asserting his own interpretation of the law. It is just this kind of dispute over what is the appropriate management response to difficult behavior by an employee that should be the subject of a grievance proceedure." (Petition, Appendix A, p.17a 820 F.2d. 1438).

CONCLUSION

Respondant requests that the petition of DeSoto for writ of certiorari be denied.

Respectfully submitted,

Theodore W. Russell
Attorney for Respondant
Yellow Freight System, Inc.

APPENDIX A

APPENDIX A

California Vehicle Code §8010(a).

Notwithstanding the provisions of this chapter, the commission may establish a pilot program to enter into agreements with other jurisdictions to provide for proportionate registration and licensing that fosters the concept of the International Registration Plan of one license plate and one cab card. Foreign jurisdictions participating in the pilot program may be authorized to collect all appropriate registration and license fees that are due to the State of California, and remit such fees to this state pursuant to the terms of the agreement. The State of California may collect all appropriate registration and license fees due other jurisdictions participating in the program and for-

ward such fees as specified in the agreement. The authority to issue plates, tabs, permits or other operating inditia shall be provided for in such agreement. Source: Deering's California Codes

APPENDIX B

APPENDIX B

Reproduction of portions of Article 46 of "Western States Area Pick-Up And Delivery Local Cartage And Dock Workers Supplemental Agreement", effective April 1, 1982 to March 31, 1985.

ARTICLE 46

Section 1. Subject to the provisions of Article 8 of the National Agreement the Employer shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension shall give at least one (1) warning notice of the complaint against such employee to the employee in writing, and a copy of the same to the Local Union affected;...

Section 2(a)... Warning letters shall be specific, not general, in nature as to alleged violation (ie.,

time, date, place, and nature of violation)...

(b) Discharge or suspension must be by proper written notice to the employee and the Union affected within ten (10) days exclusive of Saturday, Sunday and holidays of the occurence of the violation claimed by the Employer as the basis for discharge or suspension, except where dishonesty is involved... Any employee may request an investigation as to his discharge or suspension. Should such an investigation prove an injustice has been done an employee, he shall be reinstated. The Joint State Committee or the Joint Western Area Committee shall have the authority to order full, partial or no compensation for time lost.

Where an employee is suspended, or where a discharged employee is returned

to work by decision of any grievance committee or umpire, the employer shall pay the applicable Health and Welfare and Pension contributions so that there is no break in coverage.

The Joint State Committee or the Joint Western Area Committee shall have the authority in its hearing process to accept or reject any or all arguments pertaining to the issues in each case, including but not limited to timeliness, whether or not proper before the Committee, etc., and further, to order full, partial, or no compensation for time lost.

(c) At the option of an individual employer, a discharged or suspended employee who is not subject to the specific reasons for discharge set forth in Section 1 above, may be worked during the interim period pending the final

adjudication of his protest to such discharge or suspension.